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REMARKS

The Office Action dated 30 March 2005 has been reviewed, and the comments of the U.S. Patent Office have been considered. Claim 15 is currently amended to correct a typographical error, and claims 1-14 and 16-46 remain as originally filed. Thus, claims 1-46 are respectfully submitted for consideration by the Examiner.

Claims 1-16 and 25-46 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent Application No. 10/758,273 to Veinotte et al. ("Veinotte").

Applicants respectfully traverse the rejections as the claims of this application are patentably distinct from the claims of Veinotte. The claims of the instant application recite a fuel vapor management apparatus and a method of for diagnosing a purge valve whereas the claims of Veinotte are directed to an apparatus and method including a housing or a sensor that is "located upstream of an intake manifold, canister and purge valve and downstream of a vent port."

Notwithstanding these patentably distinct differences between Applicants' claims and those of Veinotte, applicants respectfully assert that the rejection also fails to establish a *prima facie* case of obviousness-type double patenting in accordance with the requirements set forth in MPEP §804 (8th Ed., Rev. 2, May 2004). That is, the Examiner has failed to establish why one of ordinary skill in the art would conclude that Applicants' application suggests modifying Veinotte's invention. Applicants respectfully submit that this burden has not been met. That is, there must be a suggestion or teaching in the prior art that would motivate one of ordinary skill in the art to modify the invention recited in Veinotte's claims.

For at least any of the above reasons, it is respectfully submitted that the rejections of claims 1-16 and 25-46 under the judicially created doctrine of obviousness-type double patenting are in error and should be withdrawn.

Claims 1-8, 10, 16 18-27, 30, 33 and 41 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 6,276,193 to Benjey. And claims 9, 11, 17, 28, 29, 31, 34-40 and 42 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Benjey. These rejections are respectfully traversed in view of the following comments.

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Independent claim 1 recites a fuel vapor management apparatus including, *inter alia*, "a device including a temperature sensor ... to detect fuel vapor flow based upon a temperature detected by the sensor." Independent claim 16 recites a fuel vapor management apparatus including, *inter alia*, "means for measuring fluid flow." Independent claim 25 recites a fuel vapor management apparatus including, *inter alia*, "flow sensor including a thermistor." And independent claim 33 recites a method for diagnosing a purge valve including, *inter alia*, "heating a temperature sensor" and "detecting fuel vapor flow using the temperature sensor." Support for these combinations of features may be found in Applicants' specification as originally filed at, for example, paragraphs 0071 to 0074. It is respectfully submitted that Benjey fails to teach or suggest Applicants' invention as a whole.

Benjey provides "a diagnostic test on a fuel tank vapor system to determine whether or not the system is subject to leakage" (column 5, lines 37-40). Benjey shows a temperature sensor 14 connected to sense fuel vapor temperature in the top of the tank 1 (Figure 1; column 3, lines 8-9). Benjey's temperature sensor 14 is used "to sense fuel vapor temperature in the top of the tank 1" (column 3, lines 8-9). Temperatures T_1 , T_2 and T_3 are sensed to determine if the fuel vapor has cooled sufficiently to begin the diagnostic test (See column 4, lines 47-51), and to determine if the fuel vapor has cooled sufficiently to conduct the diagnostic test (See column 4, lines 57-60). However, according to Benjey at column 5, lines 44-50, whether or not the system leaks is determined by a valve position detector that responds to vapor pressure. See also Benjey at column 5, lines 7-16. Thus, it is respectfully submitted that Benjey's diagnostic test is based on evaluating observed pressure changes relative to a desired threshold, and that Benjey uses temperature not as the basis for detecting fuel vapor flow, but to evaluate the conditions under which a diagnostic test is performed. As such, Benjey fails to teach or suggest detecting fuel vapor flow based upon a temperature detected by the sensor, as recited in Applicants' independent claims 1, 16, 25 and 33.

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CONCLUSION


In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of this Application and the prompt allowance of claims 1-46.

Should the Examiner feel that there are any issues outstanding after consideration of this reply, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution of the application.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 08-1641. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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